

**COMPARISON OF KEY PROVISIONS OF EXISTING LAW AND PROPOSED CHANGES IN THE FY08 NDA  
WITH REGARD TO THE TERRORISM EXCEPTION TO FOREIGN SOVEREIGN IMMUNITY**

| CURRENT LAW   | SECTION 1083   | WAIVER AUTHORITY  |
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| <ul style="list-style-type: none"> <li>■ Provides an exemption to the general immunity of foreign sovereign states against law suits seeking damages for personal injury or death resulting from state-sponsored terrorism.</li> <li>■ Limits access to U.S. courts under the state-sponsor-of-terrorism exception to victims or their representatives who are U.S. nationals.</li> <li>■ Consistent with international legal obligations, protects diplomatic and consular property of foreign states from being used in any way to satisfy victims' claims.</li> <li>■ Shields the assets of a foreign state's agencies or instrumentalities from being used to compensate victims who have secured judgments against the foreign state.</li> </ul> | <ul style="list-style-type: none"> <li>■ Expands the ability of Americans, members of the U.S. Armed Services, and employees of the United States Government to sue state sponsors of terrorism for damages in U.S. courts.</li> <li>■ Permits victims of terrorism to identify formally through a lien of <i>lis pendens</i><sup>1</sup> the foreign state's property which may be used to compensate the plaintiffs if a judgment is rendered on their behalf. Also facilitates the ability of plaintiffs who have secured judgments for compensatory or punitive damages to collect payment from the foreign state or its agencies and instrumentalities through attachments.</li> <li>■ Consistent with international legal obligations, continues to protect the diplomatic and consular property of foreign states from being used in any way to satisfy victims' claims.</li> <li>■ Reaffirms the ability of U.S. courts to utilize existing legal mechanisms to protect U.S. commercial interests which are conducting business with former state sponsors of terrorism.</li> <li>■ Clarifies that the provision does not prejudice the legal standing of the former American hostages who were held captive in Iran.</li> </ul> | <ul style="list-style-type: none"> <li>■ President may waive the totality of section 1083 as to claims against Iraq for terrorism acts that occurred before or on the date of enactment of FY08 NDA.</li> <li>■ President required to make a national security interest determination and other findings before issuing a waiver.</li> <li>■ President must notify Congress within 30 days of issuing waiver or the waiver ceases to be effective.</li> <li>■ Through a Sense of Congress, the President is encouraged to work with the Government of Iraq to compensate meritorious claims of terrorism victims who are not able to satisfy their claims due to the exercise of the waiver.</li> </ul> |

<sup>1</sup> "The purpose of filing a *lis pendens* in civil litigation is to put third parties on notice that the property is the subject of litigation, which effectively prevents the alienation of such property .... Its effect is to bind a person who acquires an interest in property subject to litigation to the result of the litigation as if he or she were a party to it from the outset." Congressional Research Service, citing 54 C.J.S. *Lis Pendens* § 34 (1987).

